IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

J U D G M E N T

S. B. CIVIL MISCELLANEOUS APPEAL NO.151/93
(L.Rs. of Natwar Lal v. Gotam & Others.)

Under Section 110-D of the Motor Vehicles Act, against the Judgment dated 17.02.1993 passed by Shri B.S.Shekhawat, RHJS, Judge, Motor Accidents Claims Tribunal, Banswara in Civil Misc. Case No.182/87.

DATE OF JUDGMENT :::: NOVEMBER 01, 2007

P R E S E N T

HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI

Mr.Anil Bhandari, for Appellant (s).
Mr.L.D.Khatri, for Respondent (s).

BY THE COURT:-

This appeal has been preferred to challenge the judgment of the Motor Accidents Claims Tribunal, Banswara dated 17.02.1993.

The claimants non-appellants preferred claim petition,

stating that on 07.11.1986, at about 5.00 p.m., Kanji and Dharia were going on bicycle to village Miya-ka-Parla. On the way at Ghatol Anandpuri road, a Bus bearing No. RJB 2772 hit bicycle, due to which Kanji and Dharia fell down and sustained injuries. The accident took place due to rash and negligent driving of bus driver. Dharia died in the hospital, whereas Kanji sustained fracture. Due to death of Dharia, claimants claimed a sum of Rs.2,00,000/-, out of which a sum of Rs.1,80,000/- was claimed towards compensation and Rs.10,000/- were claimed towards mental agony to the parents of Dharia and Rs.10,000/- for wife.

In reply to the claim petition, Insurance Company disputed the income of Dharia, apart from disputing the issuance of the cover note. The Insurance Company disputed insurance of the vehicle prior to accident. The learned Tribunal framed three issues which were then decided in favour of the claimants and the dependents of Dharia were allowed a total sum ofRs.1,66,000/-. However, the liability of the Insurance Company was kept limited to the extent of Rs.50,000/-. The appeal is finally pressed only on one issue which is pertaining to limited liability of the Insurance Company to the extent of Rs.50,000/-. Originally, the appeal was not filed to challenge the liability of the Insurance Company. However, during the

pendency of the appeal, this Court issued an order on 19.01.2004, directing the trial Court to decide the issue pertaining to the liability of the Insurance Company. The Court framed an issue by invoking its jurisdiction under O.41, R.25, CPC. Pursuant to the said direction, the trial Court passed an order on 31.03.2004, holding that the liability of the Insurance Company is limited to the extent of Rs.50,000/- only. As the appellants were given liberty to file objections in the order dated 19.01.2004, thus appellants submitted objections against the order of the trial Court dated 31.03.2004. Learned counsel for the appellants urges that the Tribunal has committed an error in limiting the liability of the Insurance Company to the extent of Rs.50,000/- only, though the vehicle was insured for all liabilities as additional amount of premium was paid. It was contended that the comprehensive insurance was sought by paying extra amount of Rs.40/-. However, ignoring the facts pertaining to extra payment of insurance premium, the Tribunal has passed order on 31.03.2004, holding that the liability of the Insurance Company is limited to the extent of Rs.50,000/-.

To justify the argument of the claimants, my attention was drawn to the Insurance Policy (Ex.A-10), wherein under the head of Section II, following provisions were mentioned pertaining to liability of third party :-

"1. Subject to the Limits of Liability the Company will indemnify the insured against all sums including claimant's cost and expenses which the insured shall become legally liable to pay in respect to :

(i) death of or bodily injury to any person caused by or arising out of the use (including the loading and/or unloading of the Motor Vehicle.

(ii) damage to property caused by the use (including the loading and/or loading of the Motor Vehicle.

PROVIDED ALWAYS that :

(a) The Company shall not be liable in respect of death injury or damage caused or arising beyond the limits of any carriageway or thoroughfare in connection with the bringing of the load to the Motor Vehicle for loading thereon or the taxing away of the load from the Motor Vehicle after unloading therefrom.

(b) Except so far as is necessary to meet the requirement of Section 92/A and 95 of the Motor Vehicles Act, 1939, the Company shall not be liable in respect of death of or bodily injury to any person in the employment of the insured arising out of an in the course of such employment.

(c) Except so far as is necessary to meet the requirements of Section 95 of the Motor Vehicles Act, 1939, in relation to liability under the Workmen's Compensation Act, 1923, the Company shall not be liable in respect of death of or bodily injury to any person (other than a passenger carried by reason of or in pursuance of a contract of employment) being carried in or upon entering or mounting or alighting from the Motor Vehicle at the time of the occurrence of the even tout of which any claim arises.

(d) The Company shall not be liable in respect of damage to property belonging to or held in trust by or in the custody or control of the insured or a member of the insured's household or being conveyed by the Motor Vehicle.

(e) The Company shall not be liable in respect of damage to any bridge and/or weigh-bridge and/or viaduct and/or to anything beneath by vibration or by the weight of the Motor Vehicle and/or load carried by the Motor Vehicle.

(f) The Company shall not be liable in respect of damage to property caused by sparks or ashes from the Motor Vehicle or caused by or arising out of the explosion of the boiler of the Motor Vehicle.

> (g) The Company shall not be liable in respect of death or bodily injury caused by or arising out of the explosion of the boiler of the Motor Vehicle unless such death or injury is caused by or arises out of the use of the Motor Vehicle in public place in India within the meaning of Motor Vehicles Act, 1939."

According to the learned counsel for the appellants, the Insurance Company had agreed to indemnify the insured against all sums, including claimant's cost and expenses which the insured shall become legally liable to pay in respect of death or bodily injury to any person caused by or arising out of the use of the motor vehicle. Referring to the proviso, it was submitted that where the Insurance Company was to limit its liabilities, specific exclusions were made or specific clause was given to show limited liability of the Insurance Company. So far as liability towards third party other than specified in Clauses (a), (b) and © of the proviso to the conditions mentioned in Section II, the liability of the Insurance Company was co-extensive to the liability of the insured. However, ignoring these conditions, the learned Tribunal limited the liability of the Insurance Company to the extent of Rs.50,000/- only. The Tribunal mainly considered the fact that even if extra premium was charged, then also, the Insurance Company cannot be held liable for the liability beyond Rs.50,000/-.

Learned counsel for the appellants has supported his arguments by placing reliance on the judgment rendered by Hon'ble Division Bench of this High Court in the case of National Insurance Co. Ltd. v. Laxmi & Others (2004 WLC (Raj.) UC 706). In the said judgment, this Court has considered the same issue as exists in the present matter and finally, it was held that taking note of the conditions of the Policy, the liability of the Insurance Company was unlimited towards the third party. The conditions considered in the aforesaid judgment were same as exist in the present matter. Thus, the very same issue was considered by the Division Bench and therein, it was held that the liability of the Insurance Company cannot be kept limited to the extent of Rs.50,000/-. The Division Bench has considered judgment of the Hon'ble Apex Court on the same issue. Thus, according to the learned counsel for the appellants, the present matter is squarely covered by the judgment of the Division Bench in the case referred to above.

Per contra, learned counsel appearing for the non-appellant Insurance Company urged that the liability of the Insurance Company was not unlimited, in view of the provisions of Section 95 (2) of the Motor Vehicles Act, 1939 (hereinafter referred to as 'the Act of 1939'). It was submitted that mere

accepting higher premium, the Insurance Company cannot be made liable beyond their liabilities provided under the statutory provisions of the Act of 1939. To support his contention, learned counsel has referred to the judgment of the Apex Court in the case of National Insurance Co. Ltd. v. Keshav Bahadur & Ors. (JT 2004 (2) SC 282). The other judgment relied by the learned counsel for the non-appellant is in the case of New India Assurance Co. Ltd. v. C.M.Jaya and Others (2002 ACJ 271). It was urged that looking to the judgment of the Apex Court, reliance cannot be placed on the judgment of the Division Bench of this High Court. The Hon'ble Supreme Court, having decided the issue, by holding that even payment of extra premium cannot construe to mean that the Insurance Company can be held liable beyond the provisions of the Act, 1939. Thus, supporting the judgment of the Tribunal, it was submitted that the only issue raised by the appellants is not sustainable thus, the appeal should be dismissed.

I have considered the rival submissions of the learned counsel for the parties and scanned the matter carefully.

The Hon'ble Apex Court considered the same issue as is involved in the present matter while deciding the matter in the case of New India Insurance Company & Others v. C.M.Jaya and

Others (Supra). The Hon'ble Apex Court had considered various judgments rendered in different cases on the same issue, thus summarizing other judgments, the Hon'ble Apex Court held as under :-

> "12. In these appeals presently before us, the judgment and order of Delhi High Court are under challenge. The deceased was riding the pillion seat of a two wheeler when it met with accident with a truck insured by the appellant. On the claimants approaching the Claims Tribunal, it awarded a sum of Rs.1,03,360 as compensation and held that the liability of the appellant was limited to Rs.50,000 and the balance amount was recoverable from the driver and owner of the truck jointly and severally. The truck owner (the respondent No.4) preferred an appeal to the High Court. The High Court held that the liability of the appellant was unlimited as the vehicle was comprehensively insured. The High Court also allowed the cross-objections preferred by the claimants-respondent Nos. 1 to 3 solely against the appellant under Order 41, rule 22, Civil Procedure Code for the full pecuniary liability to be placed upon the insurer while enhancing the amount of compensation from Rs.1,03,360 to Rs.3,60,000 with interest at the rate of 15 per cent per annum from the date of application. Hence, these two appeals are brought by the

appellant, aggrieved by the judgment and order of the High Court. Submissions were made before us by the learned counsel for the parties in support of the respective contentions citing the decisions aforementioned as to the extent of liability of the appellant to pay the amount of compensation to the respondents Nos. 1 to 3.

It is not in dispute from the admitted copy of the insurance policy produced before the court that the liability of the appellant is limited to Rs.50,000 in regard to the claim in question. The relevant clause in the policy relating to limits of liability reads :

Limits of Liability : Limit of the amount of company's liability under Section II (1) (i) in respect of any one accident – Rs.50,000

Limit of the amount of the company's liability under Section II (1) (ii) in respect of any claim or series of claims arising out of one event – Rs.50,000

It is also not the case that any additional or higher premium was paid to cover unlimited or higher liability than the statutory liability fixed as found in the term of the policy extracted above. In the light of the law stated above, it necessarily follows that the liability of the appellant is limited to Rs.50,000, as was rightly held by the Tribunal. The High Court

committed an error in taking the contrary view that the liability of the appellant was unlimited merely on the ground that the insurance had taken a comprehensive policy. In Shanti Bai's case, 1995 ACJ 470 (SC), this court has clearly expressed the opinion that a comprehensive policy issued on the basis of the estimated value of the vehicle does not automatically result in covering the liability with regard to third party risk for an amount higher than the statutory limit in the absence of specific agreement and payment of separate premium to cover third party risk for an amount higher than the statutory limit. This position is accepted in Amrit Lal Sood's case, 1998 ACJ 531 (SC), as well though no reference is made to this case. As already stated above, in Amrit Lal Sood's case, the court found an express term in the policy for covering wider risk and to meet the higher liability unlike in the case of Shanti Bai. Therefore, the High Court was not right in holding that the liability of the appellant insurance company was unlimited merely on the ground that the vehicle in question,i.e., the truck, was covered by a comprehensive insurance policy.

13. In the circumstances, we hold that the liability of the appellant insurance company is limited to Rs.50,000, as held by the Tribunal. In the view we have taken, it is unnecessary

to go into the question relating to either maintainability of cross-objections before the High Court against the appellant alone or as to the enhancement of compensation when the owner and driver have not filed appeal against the impugned judgment."

The Hon'ble Apex Court had also considered its earlier judgment rendered in the case of Amrit Lal Sood v. Kaushalya Devi Thapar (1998 ACJ 531). It was held thus :-

"4. The facts of the case were that on 25.8.1970, the Fiat car owned by the appellant No.2, collided with a goods carrier. The car was being driven by the appellant No.1, a brother of the appellant No.2. The car was insured with the respondent No.5. One Kishan Sarup Thapar, travelling in the car, got injured and was hospitalized for some time. He made claim for Rs.1,25,000 as compensation before the Motor Accidents Claims Tribunal. The Tribunal awarded Rs.15,800 as compensation. The claimant filed an appeal before the High Court for enhancement of compensation. The insurer (respondent No.5) filed appeal disputing its liability to satisfy the claim. In claimant's appeal compensation was enhanced to

Rs.20,800. In the appeal filed by the insurance company the learned Judge held that the claimant was a gratuitous passenger travelling in the car and, therefore, the insurance company was not liable. Two Letters Patent Appeals were filed – one by the legal representatives of the claimant and another by the driver of the vehicle. The appeal filed by the driver was dismissed and in the appeal filed by the legal representatives of the claimants compensation was increased to Rs.56,000 by the Division Bench of the High Court. The driver and owner of the car filed appeals in this Court. The question that came up for decision before this Court was whether the insurer was liable to satisfy the claim for compensation made by a person travelling gratuitously in the car. In deciding this question the court took the view that the liability of the insurer in the case depends on the terms of the contract between the insured and the insurer as evident from the policy. Section 94 of the Motor Vehicles Act, 1939 compels the owner of a motor vehicle to insure the vehicle in compliance with the requirements of Chapter VIII of the Act. Section 95 of the Act provides that a policy of insurance must be one which insures the person against any liability which may be incurred by him in respect of death of or bodily

injury to any person or damage to any property of third party caused by or arising out of the use of the vehicle in a public place. The section does not, however, require a policy to cover the risk to passengers who are not carried for hire or reward. The statutory insurance does not cover injury suffered by occupants of the vehicle who are not carried for hire or reward and the insurer cannot be held liable under the Act. But that does not prevent an insurer from entering into a contract of insurance covering a risk wider than the minimum requirement of the statute whereby the risk to gratuitous passengers could also be covered. In such cases where the policy is not merely a statutory policy, the terms of the policy have to be considered to determine the liability of the insurer.

The relevant clauses of the policy are reproduced in para 6 of the said judgment. Clause 1 (a) under Section II relating to liability of third party reads :

"(1) The company will indemnify the insured in the event of accident caused by or arising our of the use of the motor car against all sums including claimant's costs and expenses which the insured shall become legally liable to pay in respect of -

(a) death of or bodily injury to any person but except so far as is necessary to meet the requirements of Section 95 of the Motor Vehicles Act, 1939, the company shall not be liable where such death or injury arises out of an in the course of the employment of such person by the insured."

Looking to this clause the Court in para 8 has held:

"Thus under Section II (1) (a)of the policy the insurer has agreed to indemnify the insured against all sums which the insured shall become legally liable to pay in respect of death of or bodily injury to 'any person'. The expression 'any person' would undoubtedly include an occupant of the car who is gratuitously travelling in the car. The remaining part of clause (a) relates to cases of death or injury arising out of and in the course of employment of such person by the insured. In such cases the liability of the insurer is only to the extent necessary to meet the requirement of Section 95 of the Act. In so far as gratuitous passengers are concerned there is no limitation in the policy as such. Hence under the terms of the policy, the insurer is liable to satisfy the award passed in favour of the claimant. We are unable to agree with the view expressed by the High Court in this case as

the terms of the policy are unambiguous."

In the case of National Insurance Co. Ltd. v. Keshan Bahadur and Others (Supra), the Hon'ble Apex Court held thus -

> "In case of insurer-appellant not taking any higher liability by accepting higher premium, the liability is neither unlimited nor higher than the statutory liability fixed under Section 95 (2) of the Act. Even if a vehicle is the subject matter of comprehensive insurance and a higher premium is paid on that score, limits of the liability with regard to third party risk does not become unlimited or higher beyond the statutory liability fixed. For this purpose, a specific agreement has to be arrived at between the insured and the insurer and separate premium has to be paid in respect of additional amount of liability undertaken by the insurer in that regard. This position was highlighted by this Court in **National Insurance Co. Ltd. v. Jugal Kishore (JT 1988 (1) SC 265).** In **New India Assurance Co. Ltd. v. C.M.Jaya and Others (JT 2002 (1) SC 198)**, a constitution bench approved the view taken in **Shanti Bai**

(supra) and **Jugal Kishore** (supra). It was held that in case of insurer not taking any higher liability by accepting higher premium for payment of compensation to third party, the insurer would be liable to the extent limited under Section 95 (2) of the Act and would not be liable to pay the entire amount of compensation awarded."

The Division Bench, in the case of National Insurance Co. Ltd. v. Laxmi & Others (Supra) considered judgments rendered by the Apex Court in the case of National Insurance Co. Ltd. v. Keshav Bahadur & Others (Supra) and, thereafter, it was held :-

"22. This brings to the facts of the present case. There is no dispute about the finding that the premium charged by the Insurance Company was in excess of "Act only Policy" and was under Heading B "liability to public risk", which was indicated at Rs.240/- alongwith other premium with which we were not concerned presently. The terms of policy which defined the liability to third parties at page two of the footing is vitally different than what was before the Supreme Court in Keshav Bahadur's case (supra). On the principal clause, the terms of liability

may be quoted below :

1. Subject to the limit of liability the **Company will indemnify the insured against all sums including claimant's cost and expenses which the insured shall become legally liable to pay in respect of**

(i) death of or bodily injury to any person caused by or arising out of the use (including the loading and/or unloading) of the Motor Vehicle.

(ii) damage to property caused by the use (including the loading and/or unloading) of the Motor Vehicle.

PROVIDED ALWAYS that :

(a) The Company shall not be liable in respect of death injury or damage caused or arising beyond the limits of any carriageway or thoroughfare in connection with the bringing of the load to the Motor Vehicle for loading thereon or the taxing away of the load from the Motor Vehicle after unloading therefrom.

(b) Except so far as is necessary to meet the requirement of Section 92/A and 95 of the Motor Vehicles Act, 1939,

the Company shall not be liable in respect of death of or bodily injury to any person in the employment of the insured arising out of an in the course of such employment.

(c) Except so far as is necessary to meet the requirements of Section 95 of the Motor Vehicles Act, 1939, in relation to liability under the Workmen's Compensation Act, 1923, the Company shall not be liable in respect of death of or bodily injury to any person (other than a passenger carried by reason of or in pursuance of a contract of employment) being carried in or upon entering or mounting or alighting from the Motor Vehicle at the time of the occurrence of the even tout of which any claim arises.

(d) The Company shall not be liable in respect of damage to property belonging to or held in trust by or in the custody or control of the insured or a member of the insured's household or being conveyed by the Motor Vehicle.

(e) The Company shall not be liable in respect of damage to any bridge and/or weigh-bridge and/or viaduct and/or to anything beneath by

vibration or by the weight of the Motor Vehicle and/or load carried by the Motor Vehicle.

(f) The Company shall not be liable in respect of damage to property caused by sparks or ashes from the Motor Vehicle or caused by or arising out of the explosion of the boiler of the Motor Vehicle.

(g) The Company shall not be liable in respect of death or bodily injury caused by or arising out of the explosion of the boiler of the Motor Vehicle unless such death or injury is caused by or arises out of the use of the Motor Vehicle in public place in India within the meaning of Motor Vehicles Act, 1939."

23. A perusal of the aforesaid terms show that under principal clause, the Insurance Company accepted its liability towards third party injuries co-extensive with legal liability of the owner of vehicle. By providing various clauses under provisos it limited its liability to Act only liability in respect of matters covered by one or other of the provisos. Under none of the provisos limit of liability towards bodily injury or death caused to a third party has been

restricted to statutory liability though liability to indemnify passengers has been limited to statutory liability. So also liability towards employees has been also limited to the extent provided under the Workmen's Compensation Act.

24. No exception has been made to restricting liability undertaken by the Insurance Company to the extent the insured will become legally liable to pay in respect of death or bodily injury to third party caused by or arising out of use. Therefore, in our opinion, under policy the appellants specifically undertook unlimited liability to indemnify the insured towards the thirty party by not excluding the liability of the insured in respect of claims arising out of death or bodily injury caused to the third party. Therefore, the Motor Accident Claims Tribunal as well as the learned Single Judge were right in their conclusion. The liability of the Insurance Company on demand of additional premium was unlimited towards third party under the terms of the policy."

Looking to the condition of the insurance policy in this case, it becomes clear that a contract was executed by the

parties, wherein the insurance company had taken higher liability then provided under the Act. The premium was charged in excess to "act only policy" and thereby it was under the heading of "liability" to the public risk. Looking to the terms and conditions of the policy, it cannot be said that despite accepting higher liability by the insurance company, they can yet claim their liability to the extent of Rs.50,000/-. The insured is having the policy which covers the liability of the insured towards third party without limiting it to the extent of Rs.50,000/- only. The trial Court, while considering the policy, had not dealt with the issue as to what were the conditions between the parties as to whether the insurance company had accepted additional liability or their liability was limited towards third party to the extent it is provided under the Act. The perusal of the judgment of the Tribunal does not reveal that the issue was considered in the light of the material available on record. Hence, in these facts and circumstances, I an unable to agree with the reasons given by the Tribunal in its judgment dated 31.03.2004, which ultimately governs the original award of the Tribunal also as the matter was remanded back to the learned Tribunal for deciding additional issue pertaining to the liability of the insurance company vide order dated 19.01.2004.

In view of the discussion made above, I hold that the

liability of the insurance company was not limited to the extent of Rs.50,000/-, inasmuch as, the conditions of the insurance policy show that the insurance company has extended its liability beyond the statutory provisions. Thus, in such case, the liability of the insurance company cannot be limited to the extent it is provided under Section 95 of the Act, 1939. The Hon'ble Apex Court in the case of New India Insurance Company v. C.M.Jaya (supra) and National Insurance Co. Ltd. v. Keshav Bahadur (supra) also made it clear that if a specific agreement has been arrived at between the insured and the insurer and separate premium has been paid in respect of additional amount of liability undertaken by the insurer in that regard, then the insurance company can be held liable as per the terms and conditions of the policy. Thus, relying on the judgment of the Supreme Court, it comes out that each case has to be decided subject to terms and conditions of the policy issued by the insurance company. If the insurance company has kept its liability limited to the extent it is provided under the Statute, then even extra payment of premium cannot make insurance company liable with unlimited liabilities. However, in other cases, where terms and conditions of the insurance policy does not limit the liability of the insurance company or in other words, the insurance company has agreed to indemnify the insured against all sums, for which insured becomes liable to pay

in respect of the death or bodily injury to any person due to the use of the motor vehicle, then, in those cases, the liability of the insurance Company cannot be limited to the extent of Rs.50,000/- only.

Accordingly, I am not in agreement with the view taken by the leaned Tribunal in its order dated 31.03.2004, hence the judgments of the Tribunal dated 17.02.1993 and 31.03.2004 are set aside to the extent the liability of the insurance company is kept only to the extent of Rs.50,000/-. The appeal is allowed. The insurance company is accordingly held liable to pay the compensation as awarded by the Tribunal in its judgment dated 17.02.1993. Cost made easy.

(MUNISHWAR NATH BHANDARI), J.

scd.